

STATEMENT OF CONSIDERATION RELATING TO
401 KAR 5:006 Amended after Comments

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water

I The public hearing on 401 KAR 5:006, scheduled for January 25, 2011, at 5:00 p.m. at 300 Fair Oaks Road, was cancelled because no one from the public attended. Written comments were received during the public comment period.

II The following people submitted comments:

<u>Name and Title</u>	<u>Affiliation</u>
Jack Bender, Attorney	Kentucky League of Cities (KLC)
Annette DuPont-Ewing, Executive Director	Kentucky Municipal Utilities Association (KMUA)
George Wakim	Public Service Commission (PSC)
Jason Flickner, Water Resource Program Director	Kentucky Waterways Alliance (KWA)
Tom FitzGerald, Director	Kentucky Resources Council (KRC)
George Binder, Executive Director	American Council of Engineering Companies of Kentucky (ACEC)

III The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Anshu Singh, Wastewater Municipal Planning Section	Division of Water
Shafiq Amawi, Branch Manager	Division of Water
Abby Powell, Regulations Coordinator	Division of Water

IV Summary of Comments and Responses for 401 KAR 5:006

(1) Subject Matter: General Support for Proposed Amendments

(a) Comment: Jack Bender (Kentucky League of Cities)

KLC supports the proposed amendments to 401 KAR 5:006. The amended regulation as proposed would clarify important aspects of facility planning relating to the need to submit a new regional facility plan and the scope and content of such plans.

- (b) **Response:** The Cabinet appreciates the support of KLC.

- (2) **Subject Matter: Necessity, Function, and Conformity**
 - (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
KRC recommends an edit to the wording in the Necessity, Function, and Conformity paragraph of the regulation: *“33 U.S.C. 1313(e) requires each state to establish and maintain a continuing planning process to provide for **water quality management consistent with the requirements of 33 U.S.C. 1313(e) and consistent with the objectives of 33 U.S.C. 1251.**”*
 - (b) **Response:** Although this regulation is consistent with the goals of the Clean Water Act, as established in 33 U.S.C. 1251, this regulation does not rely on 33 U.S.C. for its authority. That authority is more clearly established by U.S.C. 1281 and 1313(e). The Clean Water Act in its entirety, 33 U.S.C. 1251-1387, is cited in the “Relates To” paragraph.

- (3) **Subject Matter: De-designation**
 - (a) **Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**
KMUA supports de-designation of repeat offenders that do not meet compliance or grant requirements. However, since Section 1(3)(b) has been changed from plural to singular, does this mean that one failure will result in mandatory de-designation?
 - (b) **Response:** KRS 13A.222 requires the agency to use singular nouns whenever possible, instead of the plural. KRS 13A.222(4)(j) reads, “A word importing the singular number may extend to several persons or things;” The agency does not intend to interpret or enforce this provision of the regulation any differently than under the prior wording.

- (4) **Subject Matter: Applicability**
 - (a) **Comment: Jack Bender (Kentucky League of Cities)**
KLC would like the cabinet to clarify that the regulation does not apply to private wastewater treatment facilities for sanitary wastewater or industrial wastewater. Also, KLC would like the cabinet to clarify that a new regional facility plan should not be required for the replacement or acquisition of a private package treatment plant for sanitary wastewater by a regional planning agency. KLC requests that “new wastewater treatment facility” be defined as “a wastewater treatment facility proposed for construction by a regional planning agency, other than a treatment facility that will be a like-kind replacement for an existing package treatment plant.”
 - (b) **Response:** As stated in the Necessity, Function, and Conformity clause, this regulation only applies to publicly owned treatment works (POTWs). Replacement or acquisition of a private package treatment plant will not trigger the requirement to submit a new regional facility plan. The triggers for a new regional facility plan are established in Section 2(1) and (2).

- (5) **Subject Matter: Timing of a new regional facility plan**
 - (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
KRC asks if a regional facility plan is required prior to Cabinet approval of a new agency, or within a time thereafter.

- (b) **Response:** A new entity is designated as a regional planning agency only after the approval of the facility plan. The regulation language in Section 2(1) has been modified to eliminate the confusion.
- (6) **Subject Matter: Expansion of a facility without antidegradation review**
- (a) **Comment: Jason Flickner (Kentucky Waterways Alliance)**
KWA states that, because the regional facility planning process is being used as a substitute for an antidegradation analysis, it is imperative that all the provisions for public notice and ability to comment and appeal be available. KWA also notes that the antidegradation *de minimus* threshold is ten percent.
- (b) **Response:** Discharges from a publicly owned wastewater treatment facility subject to the regional facility planning process are not excepted from antidegradation analysis. Antidegradation policy implementation methodology, 401 KAR 10:030, establishes that the planning and evaluation process for discharges from publicly owned wastewater treatment facilities subject to the regional facility planning process satisfies antidegradation review requirements. This regulation incorporates into the regional planning process comparable aspects of the alternatives analysis and socioeconomic review otherwise required for antidegradation procedures. This interpretation of 401 KAR 5:006 was upheld by the U.S. District Court, which found that a POTW subject to a regional plan satisfies the Tier II antidegradation analysis. The provision of the regulation that holds that a regional facility planning process satisfies the antidegradation procedures has been effective since EPA's last approval in 2005. The regional facility planning process meets all requirements for public notice, public comment, and ability to appeal. (See the Division's response to comments 16, 18, 19, and 20 regarding public notice procedures.)
- (7) **Subject Matter: Pre-planning meeting**
- (a) **Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**
KMUA supports open communication with the Cabinet and believes that meeting at the beginning of the planning process will be productive. The purpose of the pre-planning meeting is unclear to KMUA. KMUA asks what the next steps are after the pre-planning meeting and if facility plan approval is contingent upon incorporation of cabinet recommendations. Finally, KMUA asks what happens if a pre-planning meeting is requested but is not actually held by the Cabinet.
- (b) **Response:** The pre-planning meeting allows the regional planning agency and the cabinet to discuss the proposed wastewater plans. This meeting will occur very early in the planning process to discuss the scope of proposed projects and any time considerations related to construction schedules, existing water quality problems related to wastewater in the planning area to be addressed, and guidance for streamlined submittal and review of the plan. Pre-planning meetings are beneficial to the applicant and the Division of Water because they help streamline the facility plan submittals and ensure timely determinations.

- (8) **Subject Matter: Certified copies of the regional facility plan**
- (a) **Comment: George Binder (American Council of Engineering Companies)**
ACEC asks that the regulation clarify that one of the copies of the regional facility plan be certified in a way that meets the requirements of 201 KAR 18:104. ACEC also suggests that one paper copy be certified and the electronic copies be non-certified documents.
- (b) **Response:** The cabinet has made the suggested change to the regulation.
- (9) **Subject Matter: Primary projects**
- (a) **Comment: Tom FitzGerald (Kentucky Resources Council); Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**
KRC notes that in the description of a regional facility plan, the regulation uses the phrase “primary projects.” There is no definition of what constitutes a primary project and the regional facility plan should include the necessary information on all treatment works, including necessary collection and runoff systems. KMUA asks that the required content of a regional facility plan be listed and the term “primary project” be clarified.
- (b) **Response:** The term “primary project” refers to projects listed in Phase I or the projects that are ready to proceed within twenty-four months, regardless of type or importance. The term “primary projects” has been replaced with “projects that are ready to proceed within the first 24 months of the planning period”.
- (10) **Subject Matter: NEPA or NEPA-like Review**
- (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
KRC notes that the phrase “primary projects” is used in the context of the cabinet preparation of an environmental assessment. An environmental assessment must, in order to comply with the requirements of the National Environmental Policy Act, evaluate the direct, indirect and cumulative effects of the proposed action, and include all effects associated with the plan under review, not merely the effects of the “primary projects.” KRC recommends that the phrase be removed and all treatment works, including collection and runoff management systems, be included as contemplated under 33 U.S.C. 1288(b).
- (b) **Response:** The National Environmental Policy Act (NEPA) applies only to federally-funded projects and is administered by federal agencies. The facility planning process described in the administrative regulation is a state program and, consequently, is not subject to NEPA review. The primary objective of facility planning is to recommend a technically and economically feasible plan that meets the foreseeable wastewater needs of a planning area, improves the quality of surface water and groundwater, and protects environmental and cultural concerns in the planning area. To assist in meeting this objective, the state performs an environmental review of the projects proposed to start construction within the first twenty-four months of the planning period. The review process is similar to the NEPA process, as it includes evaluating alternatives, assessing environmental and cultural impacts from the proposed projects, developing an environmental assessment report, and public involvement.

- (11) **Subject Matter: Assessment of primary projects**
- (a) **Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**
KMUA believes that the terms “cost effective” and “environmentally sound”, as used in Section 3(1), are subjective.
- (b) **Response:** The cabinet uses the terms “cost effective” and “environmentally sound” to describe the goals of the planning process in Section 3(1). In the previous versions of the regulation, the standard was the “most cost effective and environmentally sound”, which the cabinet believes is a subjective standard. The information required, which is detailed in Section 3(2) and the Regional Facility Guidance, will allow the regional planning agency to select a cost effective and environmentally sound method to achieve water quality goals. Although the terms “cost effective” and “environmentally sound” are broad, the Regional Facility Guidance document incorporated by reference establishes clear and detailed parameters for evaluation of alternatives.
- (12) **Subject Matter: Sections of the plan prepared by a licensed professional engineer**
- (a) **Comment: George Binder (American Council of Engineering Companies)**
ACEC is generally supportive of the proposed change to limit the portions of the regional facility plan that must be prepared by a licensed professional engineer; however, ACEC recommends that the selection of the recommended plan also be prepared by a licensed professional engineer.
- (b) **Response:** The cabinet worked with various stakeholders, including ACEC, during the year-long drafting process of this administrative regulation to determine which aspects of the regional facility plan constituted engineering. This section of the regional facility plan, Selection of the Recommended Plan, involves preparing a brief narrative of the reasons for selecting the recommended plan. At this stage of planning, the alternatives have been thoroughly analyzed, present-worth costs have been determined by a professional engineer, and cross-cutting agencies have provided their comments about potential environmental and cultural impacts. Using all of this information, a regional planning agency may simply prepare a statement identifying the recommended plan and describing how it is cost-effective and protective of environmental and cultural resources.
- (13) **Subject Matter: Professional Engineer Requirements**
- (a) **Comment: Jack Bender (Kentucky League of Cities)**
KLC recommends that Section 3(3) be revised to indicate that the identified requirements of a regional facility plan be prepared “under the direction of” a professional engineer licensed in Kentucky. Although KLC supports the requirement for a professional engineer to be responsible for the compilation, review, and analysis of information, it should not be necessary for a professional engineer to actually prepare and assemble the required information.
- (b) **Response:** The agency made the suggested change to the regulation after assuring that the regulation reflected the language of KRS 322.360.
- (14) **Subject Matter: Asset inventory report**
- (a) **Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**
KMUA’s major concern continues to be protection of existing service territories and future expansion of city service areas into surrounding areas. Most cities that have a

POTW have submitted a 201 Facilities Plan. KMUA asks if the asset inventory report supersedes the 20-year facility plan.

- (b) **Response:** An asset inventory report does not supersede the regional facility plan. The intent of an asset inventory report is to decrease the financial burden of the planning process, especially for small communities that are experiencing no growth or negative growth. The asset inventory report will also provide the regional planning agency with a clear and detailed tool to identify and manage future infrastructure needs.

(15) Subject Matter: Asset Inventory Report

- (a) **Comment: Jack Bender (Kentucky League of Cities); Tom FitzGerald (Kentucky Resources Council)**

KLC and KRC request that the regulation establish that an initial asset inventory report be due within a specified timeframe after the effective date of the regulation. Similarly, KLC and KRC request that the regulation specify when the asset inventory report must be submitted to the Division going forward.

- (b) **Response:** If it has been ten years or more since the approval of a regional facility plan, the regional planning agency shall submit an asset inventory report by July 1, 2012. In the future, the asset inventory report shall be submitted to the cabinet ten years after the date of approval of the previous asset inventory report or regional facility plan, whichever is applicable.

(16) Subject Matter: Requirement to submit an asset inventory report

- (a) **Comment: George Binder (American Council of Engineering Companies)**

ACEC recommends that a regional planning agency be given the option to update their regional facility plan in lieu of preparing the asset inventory report.

- (b) **Response:** A regional planning agency may update a regional facility plan at any time. There is nothing in the regulation that would prohibit an agency from submitting a new regional facility plan.

(17) Subject Matter: Agency response to comments

- (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**

Section 4(4) provides that the Cabinet shall publish its assessment of an Asset Inventory Report for 30 days prior to finalizing it. It is not clear whether the regulation intends that the Cabinet will accept regional planning agency and/or public comment on the proposed assessment, and whether it will respond affirmatively to such comments. Otherwise, the purpose of the 30-day publication provision is unclear. Similarly, while Section 6(b) calls for the agency to post the environmental assessment for thirty (30) days, it is unclear whether the agency intends for that posting to begin a public comment period, and whether the agency will commit to affirmatively consider and respond to comments received.

- (b) **Response:** The Cabinet will accept comments on an asset inventory report and respond to those comments. As with the regional facility plan, the cabinet accepts public comments on environmental assessments and responds to them. In all instances, the comments and responses are part of the administrative record. The regulation has been modified to clarify the public comment procedures.

- (18) **Subject Matter: Agency action on the regional facility plan**
- (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
Section 5(1) presupposes that all regional facility plans **will** be approved, giving the impression that the public comment and hearing process is simply a procedural step to approval. KRC suggests that the language be modified to read “Prior to final agency action on the regional facility plan...”
- (b) **Response:** The agency has made the suggested change.
- (19) **Subject Matter: Statewide thirty-day comment period**
- (a) **Comment: Jason Flickner (Kentucky Waterways Alliance)**
KWA requests that the regulation be revised to require the cabinet to receive the draft regional facility plans and public notice as a digital submission prior to the commencement of the requirements of KRS 424. KWA also requests that the cabinet provide public notice of the draft regional facility plan and public hearing for a minimum of thirty days before the termination of the public comment period. KWA believes that the public should have access to the plan for at least thirty days before the conclusion of the comment period.
- (b) **Response:** The Cabinet has made revisions to the draft regulation to incorporate the suggested change. The Cabinet shall also public notice the draft facility plan.
- (20) **Subject Matter: Public notification**
- (a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
KRC requests that, in addition to the KRS Chapter 424 notice, which reaches an increasingly smaller number of average citizens, public notice be posted on the agency Web site, and be sent to those who have asked for email notification of agency permitting actions. Additionally, regional planning agencies should post any proposed asset inventory report or proposed plan (including plan amendments) on their Web sites. The public hearing should be conducted at a time and place that is ADA compliant and is convenient to the regional planning agency constituent customers.
- (b) **Response:** The regulation has been amended to clarify that the cabinet will post on its Web site asset inventory reports and draft regional facility plans for thirty days, and accept public comments. Because a regional planning agency may not have a Web site, there is no provision mandating that the regional planning agency post its plan on its Web site. The cabinet will send notice to those people who have requested email notification of agency permitting actions. Although the cabinet agrees that a regional planning agency must comply with federal law, those laws apply without noting them in this administrative regulation.
- (21) **Subject Matter: Public notice**
- (a) **Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**
KMUA does not support an extension of the comment period which may be used, in some instances, to slow the progress of a project. KMUA requests a definite date or sunset on public comment.
- (b) **Response:** The public comment period on the regional facility plan is administered by the regional planning agency. The regulation mandates a minimum comment period of thirty (30) days. The regional planning agency has the option to extend the comment

period if it believes that additional public input is necessary. The regional planning agency is not obligated to extend the public comment period.

(22) Subject Matter: Environmental Reviews

(a) Comment: Jack Bender (Kentucky League of Cities)

KLC supports the Division's deletion of references to the National Environmental Policy Act (NEPA) from the regulation and the Regional Facility Plan Guidance.

(b) Response: The Cabinet appreciates the support of KLC.

(23) Subject Matter: Environmental assessment report

(a) Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)

KMUA has concerns about the implications of the mitigation measures that the cabinet may identify in the environmental assessment report. KMUA asks if the mitigation measures will be required in the approved plan. KMUA recommends that the cabinet inform the applicant of potential environmental problems during the planning stage. This would allow the applicant to consider environmental sensitivities for projects in the future.

(b) Response: One discussion topic of the pre-planning meeting will inform the applicant of any known potential adverse impacts on environmental and cultural resources from the proposed projects. A project that is ready to proceed within the first twenty-four months of the planning period is required to undergo review by the cross-cutting agencies (i.e. agencies in charge of enforcing federal laws and executive orders). By identifying the potential adverse impacts at the beginning of the regional planning process, the regional planning agency has time to explore measures to avoid, minimize, or otherwise mitigate those potential impacts. If the cross-cutting agencies require mitigation measures, those measures will be part of the cabinet facility plan approval and be added to State Environmental Assessment and Planning Report (SPEAR) as conditions to be fulfilled prior to starting construction.

(24) Subject Matter: Appeal of Regional Facility Plan approvals

(a) Comment: Jason Flickner (Kentucky Waterways Alliance)

KWA believes that the regulation is unclear about how to appeal an approval of a regional facility plan. KWA requests that the division include the time and method of appeal in the regulation.

(b) Response: A determination by the cabinet to approve or deny a regional facility plan is a final determination authorized by KRS 224. As such, the final determination is subject to an appeal under KRS 224.10-420.

(25) Subject Matter: Infiltration/Inflow in guidance document

(a) Comment: George Wakim (Public Service Commission)

On page 11 of the Regional Facility Plan Guidance, the wording is confusing when an estimate of non-excessive infiltration/inflow is discussed. Is the 275 gallons stated as an estimate of the infiltration allowance or a total of I/I plus sewage flow?

(b) Response: The infiltration/inflow should be considered in flow calculations for existing systems. The 275 gallons stated is a total of I/I plus sewage flow. The requirement has been clarified in the guidance document.

- (26) **Subject Matter: Engineer's stamp**
(a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
While the agency has indicated in the regulation text that not all provisions of a regional facility plan need to be developed by an engineer, the guidance still requires that the overall plan have an engineer's stamp; a stamp that engineers may be reluctant to provide unless he or she has overseen all component of the plan. The guidance should clarify that those aspects of the plan requiring development by an engineer should bear a stamp.
(b) **Response:** The cabinet has made a change in the guidance document to clarify that those aspects of the plan requiring development by an engineer should bear the engineer's stamp.
- (27) **Subject Matter: Point and nonpoint sources of pollution**
(a) **Comment: Tom FitzGerald (Kentucky Resources Council)**
KRC recommends that the guidance be revised to assure that all regional facility plans incorporate all applicable requirements for area-wide wastewater management plans, including provisions to address both point and nonpoint sources of pollution, as provided in and where required by 33 U.S.C. 1288(b) and 33 U.S.C. 1288(d).
(b) **Response:** This administrative regulation establishes Kentucky's regional facility planning process for publicly-owned wastewater treatment works that are, or result in, point sources of water pollution in designated planning areas. Area-wide wastewater management planning involves developing structural and non-structural alternatives for addressing both point source and non-point source water pollution. Land use considerations play an important part in effective area-wide planning. Because regional planning agencies lack the jurisdictional authority to force landowners to implement controls for managing non-point source water pollution from their lands, it would be inappropriate to include that requirement in this regulation.
- (28) **Subject Matter: Regional facility plan guidance document**
(a) **Comment: George Binder (American Council of Engineering Companies)**
ACEC recommends several technical corrections to the regional facility plan guidance document.
(b) **Response:** The cabinet has made the recommended changes.
- (29) **Subject Matter: Regional facility plan guidance document and floodplain map**
(a) **Comment: George Binder (American Council of Engineering Companies)**
ACEC asks if it is the intent of KDOW that a Flood Study be completed if there is not a FEMA flood plain map, as part of the regional facility plan.
(b) **Response:** If the area is not included in FEMA floodplain mapping, a flood study will not be required for the facility plan; however, the State Planning and Environmental Assessment Report will contain language pertaining to the requirement to complete the study prior to construction.
- (30) **Subject Matter: 20-Year planning period in the regional facility plan guidance document**
(a) **Comment: George Binder (American Council of Engineering Companies)**

By including the phrase "...and costs are amortized" in the regional facility guidance document, KDOW appears to be mandating a planning period equivalent to the funding payback period, which is typically 20 years. Please clarify.

- (b) **Response:** The regulation provides flexibility in the selection of a planning period. We suggested using a twenty-year time frame for cost analysis since the service life of wastewater infrastructure is typically twenty years.

(31) **Subject Matter: Regional facility plan guidance and the triple bottom line**

(a) **Comment: George Binder (American Council of Engineering Companies)**

Over the past several years, our industry has gravitated toward a "triple bottom line" approach in the development of technical solutions, which is the use of social, environmental, and economic considerations in the development and evaluation of alternatives. KDOW should utilize an approach that is somewhat consistent with this triple bottom line approach.

- (b) **Response:** In Section 8 of the Facility Plan Guidance, the document states that social, environmental, and economic impacts should be considered during development and evaluation of alternatives.

(32) **Subject Matter: Asset inventory report clarification**

(a) **Comment: George Binder (American Council of Engineering Companies)**

ACEC recommends several technical corrections to the asset inventory report form.

- (b) **Response:** The cabinet has made the recommended changes.

(33) **Subject Matter: Inclusion of multiple assets within a facility**

(a) **Comment: George Binder (American Council of Engineering Companies)**

ACEC recommends changes to the asset inventory report form that would include the assessment of multiple assets within multiple facilities within a single treatment plant or pump station.

- (b) **Response:** The cabinet acknowledges that a treatment plant or pump station may have many assets, but the cabinet only has authority over the assets directly related to conveyance and treatment of the wastewater. It would be cost prohibitive to include every asset (including the HVAC, roof, etc) within each building.

V Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The Division of Water reviewed the comments and, as a result, is amending the administrative regulation as follows:

Page 2

Section 1(1)

Line 17

After "a regional planning agency", insert the following:

. An applicant for designation as a regional planning agency shall submit

Delete "by submitting".

Page 3

Section 2(1)

Line 16

After “(1)”, insert the following
An applicant for designation as

Page 4

Section 2(4)

Line 23

After “submitted to the cabinet.”, insert the following:
One (1) submitted copy shall be certified in a manner that meets the requirements established in 201 KAR 18:104.

Page 6

Section 3(1)

Line 3

After “environmental assessment of the”, delete “primary”.

Lines 3 and 4

After “regional facility plan”, insert the following:
that are ready to begin construction within the first twenty-four (24) months of the planning period

Page 9

Section 3(3)

Line 11

After “shall be prepared by”, insert the following:
, or under the direct supervision of,
Delete “by”.

Page 9

Section 4(2)(c)

Line 23

After “(c) Asset inventory”, insert a semicolon.

Page 10

Section 4(3)

Line 5

After “cabinet shall issue”, delete “an assessment report”.
After “regional planning agency”, insert “an assessment report”.

Page 10

Section 4(4)

Line 8

After “The cabinet shall”, insert “provide public notice of”.
Delete “publish”

Line 9

After “Web site for thirty (30) days.”, insert the following:

(5) The public shall have an opportunity to comment on the cabinet’s assessment of the asset inventory report and the period for comment shall remain open for thirty (30) days from the date of the first publication of the report.

(6)(a) If it has been ten (10) years or more since the approval of a regional planning agency’s regional facility plan, the regional planning agency shall submit an asset inventory report to the cabinet by July 1, 2012.

(b) A subsequent asset inventory report shall be due to the cabinet ten (10) years from the approval date of the regional facility plan or asset inventory report, whichever is most recent.

Page 10

Section 5(1)

Lines 10 and 11

After “(1) Prior to”, insert “final agency action on”.

Delete “the approval of”.

Page 11

Section 5(3)

Line 6

After “copy of the public notice”, insert “and the draft plan”.

Line 7

After “Web site at least”, insert “thirty (30) days”.

Delete “two (2) weeks”.

Page 11

Section 5(5)

Line 15

After “regional facility plan.”, insert the following:

In the interest of time and efficiency,

Delete “Reasonable”.

Line 16

After “up on the time”, insert “allowed”.

Delete “limit”.

Page 12

Section 6(1)(a)

Lines 4 and 5

After “impacts resulting from the” insert “proposed”.

Delete “primary”.

After “projects”, insert the following:

that are ready to begin construction within the first twenty-four (24) months of the planning period

Delete “proposed”.

Page 12

Section 6(1)(b)

Line 6

After “The cabinet shall”, insert “provide public notice of”.

Delete “publish”.

Line 8

After “(c)”, insert the following:

The public shall have an opportunity to comment on the environmental assessment report, and the period for comment shall remain open for thirty (30) days from the date of the first publication of the report.

(d)

Page 12

Section 7(1)(a)

Line 23

After “Facility Plan Guidance”, insert “February 2011”.

Delete “December 2010”.

Page 13

Section 7(1)(b)

Line 1

After “Inventory Report Form”, insert “February 2011”.

Delete “December 2010”.